



295966



**U.S. Department of Justice**

**Environment and Natural Resources Division**

*Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044-7611*

*Telephone (202) 514-1711  
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March 7, 2008

Mary A. Gade  
Regional Administrator  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3950

Re: Agreement for Release CERCLA 107(r) Lien at  
Vacant Lot Superfund Site, City of North Chicago, Illinois

Dear Ms. Gade:

This is to inform you that, on behalf of the Attorney General of the United States and pursuant to the terms of Sections 107(r) and 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9622, I am approving in writing on this date the enclosed Agreement for Release and Waiver of Lien, CERCLA § 107(r), at the Vacant Lot Superfund Site, City of North Chicago ("City"), Illinois.

The Agreement resolves the EPA's CERCLA Section 107(r) windfall lien claim against the City, the current owner of the Site. Under this Agreement, the City has taken and will take a variety of actions to provide for and assist with the response actions to be performed at the Site. In return, EPA will release its windfall lien on the Site arising from any financial benefit to the City from EPA's response actions at the Site.

Sincerely,

W. Benjamin Fisherow  
Deputy Chief

cc: Thomas Kruger, EPA Region 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: ) U.S. EPA Region 5  
) Docket No.: V-W-08-~~V-C-W~~ '08 C 898  
Vacant Lot Site )  
)  
North Chicago, Illinois ) UNDER THE AUTHORITY OF  
) THE COMPREHENSIVE  
) ENVIRONMENTAL RESPONSE,  
) COMPENSATION, AND  
Settling Purchaser: ) LIABILITY ACT, AS  
City of North Chicago, Illinois ) AMENDED, 42 U.S.C. §§ 9601,  
) *et seq.*  
)  
) Agreement for Release and Waiver  
) of Lien, CERCLA § 107(r)  
\_\_\_\_\_ )

**I. INTRODUCTION**

This Release and Waiver of Lien Agreement ("Agreement") is made and entered into by and between the United States Environmental Protection Agency ("U.S. EPA") and the City of North Chicago, an Illinois municipal corporation ("City") (collectively, the "Parties").

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601, *et seq.*

The subject Site ("Site") is located at the northeast corner of Commonwealth Avenue and Martin Luther King Drive in North Chicago, Lake County, Illinois, and depicted generally on the map attached as Exhibit 1. The Site is composed of two parcels, the former Fansteel site ("Fansteel Property") and the former EMCO Chemical Distributors site ("EMCO Property"). The location of the two parcels is also depicted generally on the map attached as Exhibit 1.

Title to the portion of the EMCO Property located east of Pettibone Creek is expected to be conveyed to the City in 2007.

Title to the Fansteel Property was conveyed to the City pursuant to the exercise of the City's Eminent Domain powers on March 8, 2005. The conveyance of title was contemplated in a Consent Decree which was approved by the United States Bankruptcy Court for the District of Delaware on November 17, 2003, and later clarified and approved in a Consent Order entered by the United States Bankruptcy Court for the District of Delaware on or about March 4, 2005 ("Consent Order").

The primary purposes of this Agreement are: (1) to settle and resolve, subject to Section VIII, Reservation of Rights, the lien against the Site under Section 107 of CERCLA, 42 U.S.C. § 9607(r); and (2) to provide for and assist with response actions to be performed at the Site.

The release and waiver of this lien, in exchange for provision by the Settling Purchaser to U.S. EPA of consideration satisfactory to the Administrator, is in the public interest.

U.S. EPA and the Settling Purchaser recognize that this Agreement has been negotiated in good faith. U.S. EPA and the Settling Purchaser agree to comply with and be bound by the terms of this Agreement and the Settling Purchaser further agrees that it will not contest the basis or validity of this Agreement or its terms.

## **II. DEFINITIONS**

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. “Bona Fide Prospective Purchaser” or “BFPP” shall mean a person as described in CERCLA § 101(40).
2. “U.S. EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
3. “Parties” shall mean U.S. EPA and the City.
4. “Settling Purchaser” shall mean the City.
5. “Site” shall mean the property, encompassing approximately 12 acres, located at the northeast corner of Commonwealth Avenue and Martin Luther King Drive in North Chicago, Lake County, Illinois and shown on the map included as Exhibit 1 to this Agreement.
6. “United States” shall mean the United States of America, including its departments, agencies, and instrumentalities.

### **III. STATEMENT OF FACTS**

7. The City has adopted a Comprehensive Redevelopment Plan (“Plan”) to promote and revitalize economic development within its borders. The Plan includes the acquisition and redevelopment of approximately 40 acres (“Redevelopment Area”) of blighted property generally bordered by the EJ&E Railroad to the north, Sheridan Road to the east, Martin Luther King, Jr. Drive to the south and Commonwealth Avenue to the west. The Site is located within this Redevelopment Area. The City has made significant present and future commitments to accomplish the Redevelopment Plan, including the following:

- a) On November 1, 2004, the City re-zoned the properties within the Redevelopment Area from Industrial to General Business use. Residential use is prohibited at the Site;
- b) On March 7, 2005, the City acquired title to the Fansteel Property through the exercise of its eminent domain powers. As provided in the Consent Order, the City paid \$1.4 million to acquire the Fansteel Property, and those funds were placed in a U.S. EPA special account to be used by U.S. EPA for further response actions at the Site;
- c) On March 10, 2005, the City issued approximately \$13 million in General Obligation Bonds (the “Bonds”) for the purpose of financing the Redevelopment Project in the Redevelopment Area, including water and sewer line improvements;

d) On October 25, 2005, the City entered into a Redevelopment Agreement with McShane Corporation and Bulls Development Company, Inc. to serve as the master developer of the Redevelopment Area. The Agreement provides for, among other things, the timely implementation of development activities, including site clearing and soil management, and construction and maintenance of commercial buildings and parking lots within the Redevelopment Area;

e) The City has acquired title to other parcels comprising the Redevelopment Area. Agreements to acquire remaining parcels, including a portion of the EMCO Property, have been negotiated and the transfer of title to these parcels is expected to be completed in 2007;

f) The City has removed pre-demolition asbestos, solid waste and process residues from the Redevelopment Area within buildings and structures where demolition has been completed and has disposed of these materials at licensed landfills;

g) The City has demolished all buildings and above-grade structures at the Lavin property (adjacent property to the east of the Fansteel property), however floor slabs and paved areas were left intact;

h) The City has demolished the former boiler building, stack, ammonia storage building, south warehouses, Maintenance A&B, Sintering building, fuel oil tanks, railroad

trestle and guard house at the Fansteel property, however, floor slabs and paved areas were left intact to serve as engineered barriers; and

i) The City has removed and disposed of buried slags and foundry sands at off-site landfills, when encountered in sewer, waterline, railroad crossing and other infrastructure projects within the Redevelopment Area.

j) The City has arranged for removal of the electric substation formerly located on the Fansteel property.

8. The U.S. EPA has performed response actions under CERCLA at the Fansteel and EMCO properties. Under an Order issued by U.S. EPA, Fansteel completed an Engineering Evaluation/Cost Analysis ("EE/CA") that was approved by U.S. EPA on October 12, 2005. That EE/CA, along with U.S. EPA's June 10, 2005 removal assessment for the EMCO Property, and other information gathered by U.S. EPA, will provide the basis for an Action Memorandum selecting further response actions to be performed by U.S. EPA to address hazardous substances present at the Site.

#### **IV. ACTIONS TO BE PERFORMED BY SETTLING PURCHASER**

9. The City understands that the \$1.4 million payment it made to acquire the Fansteel Property, along with other funds, has been placed in a Special Account in the U.S. EPA Superfund to be used for future response actions at the Site. Those future response actions will be selected in an Action Memorandum to be issued after public

comment on U.S. EPA's proposed cleanup measures. The Parties anticipate that the measures selected in the Action Memorandum will be performed by U.S. EPA except for certain actions to be performed by the Settling Purchaser as specifically provided below. Cleanup alternatives identified in the EE/CA and in U.S. EPA Technical Memoranda include: (a) excavation and source removal of volatile organic compounds ("VOCs") at the Fansteel Property and the EMCO Property; (b) installation or upgrading of engineered barriers to limit exposures to heavy metals and VOCs at the Fansteel Property; (c) maintenance and repair of any engineered barriers that are installed; (d) installation of appropriate barriers or technologies to limit vapor intrusion into buildings at the Site; (e) monitoring of contaminant levels in soil vapor and ground water at the Site; (f) removal of buildings and structures as necessary to achieve the most cost-effective excavations; (g) encapsulation or appropriate restoration of Pettibone Creek on the EMCO Property; (h) placement of appropriate legally enforceable use restrictions on the Site to prevent unacceptable exposures to residual contamination.

10. In consideration of and in exchange for the Release and Waiver of Lien in Section VIII, Settling Purchaser agrees to finance and perform the following actions:

a) Settling Purchaser shall secure the Site against unauthorized access in order to limit exposures to hazardous substances and interference with response actions;



b) Settling Purchaser shall ensure that the Site will be used by it and its successors in title and possession only for commercial/industrial (non-residential) purposes by taking all measures required by U.S. EPA's selected response action, which may include measures such as zoning requirements, deed restrictions and restrictive covenants;

c) Settling Purchaser shall ensure that any protective cover constructed or left in place as part of U.S. EPA's selected response action will either be regularly maintained or replaced by another cover (i.e. parking lot, building, or engineered barrier) approved in writing by U.S. EPA until U.S. EPA determines that the cover is no longer necessary to prevent unacceptable risks to human health or the environment;

d) To the extent U.S. EPA's selected response action requires construction or installation of a protective cover where such a cover is not currently present, Settling Purchaser shall construct and/or install such protective cover within 6 months after the completion of U.S. EPA's on-Site construction and excavation activities under the selected response action, subject to extension by written consent of U.S. EPA as provided in Section XIV ( Modifications);

e) Settling Purchaser and its successors in title and possession of the Fansteel Property shall not demolish the remaining portion of the former Fansteel main building (as identified in Exhibit 1) floor slabs and foundations without first providing for U.S. EPA review and approval a written workplan assuring that any potential dispersion of

contaminated soil will be controlled and minimized and that any engineered barriers retained or installed as part of the demolition are protective. Above Grade portions of the building may be demolished by the City by advance notification to USEPA. The City will provide USEPA with copies of plans for the demolition, if requested.

f) Settling Purchaser and its successors in title and possession of the Fansteel Property shall assess and control all potential vapor intrusion pathways for VOCs in soil and groundwater at the Site for all buildings to be constructed and all existing buildings to be occupied at the Fansteel Property. The controls on potential vapor intrusion pathways shall include installation of appropriate barriers or technologies to limit vapor intrusion into buildings at the Site using methods and materials approved by U.S. EPA ;

g) If U.S. EPA selects a response action that includes excavation in the northeastern portion of the EMCO Property (in the general area depicted in Exhibit 1), the Settling Purchaser shall notify U.S. EPA in writing no later than 30 days before such excavation is scheduled to begin whether the Settling Purchaser intends to use the excavated area to convert it into a stormwater detention pond, for the benefit of surrounding development. If Settling Purchaser provides written notice of intent to use the excavated area as a stormwater detention pond, U.S. EPA will not backfill the excavated area and the Settling Purchaser shall (i) secure the area after receiving notice from U.S. EPA that the

excavation is completed; and ii) develop appropriate environmental/engineering controls to preclude migration to any surface water pathway;

h) Any building constructed on the Site shall be undertaken with engineering and site controls that recognize the environmental conditions of the Site, including

- i) Soil management plan;
- ii) Engineered barriers;
- iii) Construction worker protection;
- iv) Design/construction of stormwater detention with engineering controls;
- v) Water quality standards

All such plans shall be provided to U.S. EPA for review and comment at least 45 days prior to construction. All actions undertaken by Settling Purchaser at the Site shall be performed in accordance with the requirements of the Action Memorandum and all applicable federal and state laws and regulations.

- i) Settling Purchaser has designated:

Bruce Burris  
City Engineer  
1850 Lewis Avenue  
North Chicago, IL 60064

as its Project Coordinator who shall be responsible for administration of all actions by Settling Purchaser required by this Agreement. To the greatest extent possible, the Project Coordinator shall be present on Site during Site work.

U.S. EPA retains the right to disapprove of the designated Project Coordinator. If U.S. EPA disapproves of the designated Project Coordinator, Settling Purchaser shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name, address, telephone number, and qualifications within 4 business days following U.S. EPA's disapproval. Receipt by Settling Purchaser's Project Coordinator of any notice or communication from U.S. EPA relating to this Agreement shall constitute receipt by Settling Purchaser. U.S. EPA has designated:

Syed Quadri  
Remedial Response Branch  
Superfund Division  
U.S. EPA Region 5  
77 W. Jackson Blvd.  
Chicago, Illinois 60604-3590

as its Project Coordinator.

j) U.S. EPA and Settling Purchaser shall have the right, subject to Paragraph 10.i, to change their respective designated Project Coordinators. U.S. EPA shall notify the Settling Purchaser, and Settling Purchaser shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The

HPH letter  
Testworth progress

**Jeep & Blazer, L.L.C.**  
**environmental law**

Jeffery D. Jeep\*  
Michael S. Blazer\*\*  
Thomas S. Yu  
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January 24, 2008

Re: **AGENDA FOR SHERIDAN CROSSING MEETING**

1800 Lewis Ave.

**U.S. EPA**

- I. Involvement with Site
- II. Engineering Evaluation Cost Assessment Report
- III. Removal Action
- IV. Windfall Lien Waiver Settlement Agreement

**INLAND REAL ESTATE and MAIN STREET COMMERCIAL PARTNERS**

- V. Involvement with Site
- VI. Development Plans

**MISCELLANEOUS**

- VII. Pettibone Creek
- VIII. Detention Pond
- IX. Construction Timelines
- X. Working Groups and Contacts

initial notification may be made orally but it shall be promptly followed by a written notice.

#### **V. ACCESS/NOTICE /INSTITUTIONAL CONTROLS**

11. Settling Purchaser agrees to provide U.S. EPA, Illinois EPA, their authorized officers, employees, representatives, and all other persons performing response actions under U.S. EPA oversight, an irrevocable right of access at all reasonable times to the Site and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by Settling Purchaser, for the purposes of performing and overseeing response actions at the Site under federal law. U.S. EPA agrees to provide reasonable notice to Settling Purchaser of the timing of response actions to be undertaken at the Site. Notwithstanding any provision of this Agreement, U.S. EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901("RCRA"), *et seq.*

12. Within 60 days after the effective date of this Agreement, Settling Purchaser shall submit to U.S. EPA for review and approval notice(s) to be filed with the Lake County Recorder of Deeds, State of Illinois, which shall provide notice to all successors-in-title that the Fansteel Property is part of the Site, that U.S. EPA will be selecting and

performing a response action for the Site, and that U.S. EPA has released and waived its Section 107(r) lien on the Site in this Agreement. At least 20 days prior to acquisition of the EMCO Property, Settling Purchaser shall submit to U.S. EPA for review and approval notice(s) to be filed with the Lake County Recorder of Deeds, State of Illinois, which shall provide notice to all successors-in-title that the EMCO Property is part of the Site, that U.S. EPA will be selecting and performing a response action for the Site, and that U.S. EPA has released and waived its Section 107(r) lien on the Site in this Agreement. Such notices shall identify the name and docket number of this Agreement. The Settling Purchaser shall record each notices within 20 days of U.S. EPA's approval of the notice. The Settling Purchaser shall provide U.S. EPA with a certified copy of the recorded notices within 30 days of recording such notices.

13. a) Settling Purchaser shall implement and comply with any land use restrictions and institutional controls on the Site in connection with the response actions selected by U.S. EPA. Settling Purchaser shall also provide notice to U.S. EPA a minimum of 30 days prior to the demolition or significant alteration of any structure on the Site, or any significant alteration of the topography of the Site. To the extent such institutional controls require periodic inspection and repair or replacement of any protective covers or engineered barriers, Settling Purchaser shall develop and submit to U.S. EPA for approval under Section VII of this Agreement an operation and

maintenance plan for performance of all necessary inspections, repairs and replacements. Settling Purchaser and its successors in interest shall implement the operation and maintenance plan as approved by U.S. EPA.

b) If the response action selected by U.S. EPA includes any land use restrictions and institutional controls on the Site, within 90 days after selection of such response action, Settling Purchaser shall submit to U.S. EPA for review and approval a Declaration of Environmental Easement and Environmental Covenant running with the land to be filed with the Recorder's Office, Lake County, State of Illinois, which shall provide: (i) a right of access to the Site, (ii) a right to enforce restrictions on the use of such property, and requires any subsequent transferee to be bound by all the requirements of the operation and maintenance plan required under paragraph 13(a) above, and (iii) for at least twenty-one (21) days notice to U.S. EPA prior to the transfer of any interest in the relevant property. The Settling Purchaser shall record the Declaration of Environmental Easement and Environmental Covenant within 10 days of U.S. EPA's approval of the notice. The Settling Purchaser shall provide U.S. EPA with a certified copy of the recorded Declaration of Environmental Easement and Environmental Covenant within 30 days of recording. Settling Party must ensure that the Restrictive Covenant remains in place and effective.



c) If the response action selected by U.S. EPA includes any land use restrictions and institutional controls on the Site, within 90 days after selection of such response action, Settling Purchaser shall submit to U.S. EPA a current title insurance commitment or some other evidence of title acceptable to U.S. EPA, which shows title to the land described in the Declaration of Environmental Easement and Environmental Covenant under paragraph 13.b to be free of all prior liens and encumbrances (except those liens and encumbrances approved by U.S. EPA or when, despite best efforts, Settling Party is unable to obtain release or subordination of such prior liens or encumbrances). Prior to recording the record the Declaration of Environmental Easement and Environmental Covenant under paragraph 13.b, Settling Party shall update the title search and, address any new liens or encumbrances that have occurred since the effective date of the commitment that may affect the title adversely. Settling Party shall provide a copy of the recorded Declaration of Environmental Easement and Environmental Covenant to all holders of record of any remaining prior liens or encumbrances.

14. For so long as the Settling Purchaser is an owner or operator of all or part of the Site, Settling Purchaser shall ensure that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Site shall provide access and cooperation to U.S. EPA, its authorized officers, employees, representatives, and all other persons performing response actions under U.S. EPA oversight. Settling Purchaser shall

ensure that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Site implement and comply with any land use restrictions and institutional controls on the Site in connection with a response action, as further defined in the U.S. EPA's Action Memorandum.

15. a) Upon sale or other conveyance of the Site or any part thereof, Settling Purchaser shall require that each grantee, transferee or other holder of an interest in the Site or any part thereof shall provide access and cooperation to U.S. EPA, its authorized officers, employees, representatives, and all other persons performing response actions under U.S. EPA oversight. Settling Purchaser shall ensure that each grantee, transferee or other holder of an interest in the Site or any part thereof shall implement and comply with any land use restrictions and institutional controls on the Site in connection with any response action required by U.S. EPA. Settling Purchaser shall also continue to implement the operation and maintenance plan unless U.S. EPA approves transfer of responsibility for implementation of that plan to another party.

b) Any instrument or memorandum thereof transferring (i) complete possession or ownership of the Site through sale, lease, deed or otherwise by Settling Purchaser, or (ii) partial possession or ownership of the Site through sale, lease, deed or otherwise by Settling Purchaser which provides the person acquiring such property rights the right or authority to control any surface areas where land use restrictions, institutional

controls and/or the operation and maintenance plan apply, shall be recorded with the Lake County Register of Deeds and shall provide that:

- i. Settling Purchaser reserves a right of access for the purpose of conducting any activity related to this Agreement; and reserves the right to enforce the restrictions and covenants in any land use restrictions and institutional controls on the Site for (a) Settling Purchaser; and (b) U.S. EPA and its authorized representatives, as third party beneficiary;
- ii. the transferee expressly agrees to comply with the land use restrictions and institutional controls on the Site including the Declaration of Environmental Easement and Environmental Covenant;
- iii. agreement to comply with the land use restrictions and institutional controls on the Site and the Declaration of Environmental Easement and Environmental Covenant shall be expressly included by any subsequent transferor in any instrument transferring complete or partial possession or ownership of the Site;
- iv. U.S. EPA shall be expressly named in any instrument effecting such transfer of complete or partial possession or ownership of the Site as a third party beneficiary of the right to enforce the restrictions and covenants in the land use restrictions and institutional controls on the Site and the Declaration of Environmental Easement and Environmental Covenant , and such instrument shall provide that

U.S. EPA may directly enforce such obligations and rights as against the transferee under such instrument and any successor to any such transferee; and

v. any subsequent instrument, or memorandum thereof in the case of a lease, effecting such transfer of complete or partial possession or ownership of the Site shall be recorded with the Lake County Register of Deeds with a copy provided to U.S. EPA.

c) Settling Purchaser shall provide at least twenty-one (21) days prior written notice to U.S. EPA of any proposed conveyance of all or part of the Site that may trigger the recordation requirements of paragraph 15.b. Settling Purchaser shall submit to U.S. EPA for review and receipt of U.S. EPA's concurrence that the instrument of conveyance complies with the requirements of Paragraph 13:

i. the proposed draft deed, in recordable form, or other instrument of conveyance, including a lease,(except for commercial or industrial leases transferring possession for a limited period of time) that is enforceable under the laws of the State of Illinois;

ii. with respect to any lease (except for commercial or industrial leases transferring possession for a limited period of time) a memorandum of lease in recordable form setting forth the requirements of Paragraph 13 contained in such lease; and

iii. a current title search, commitment for title insurance or other evidence of title which documents that the recorded land use restrictions and institutional controls on the Site remain in place and effective, as provided in Paragraph 13.

16. The Settling Purchaser shall provide a copy of this Agreement to any current lessee, sublessee, and other party with rights to use the Site as of the effective date of this Agreement.

#### **VI. BFPP STATUS**

17. Settling Purchaser shall take and maintain all steps necessary to achieve and maintain status as a “Bona Fide Prospective Purchaser” as that term is defined in Section 101(40) of CERCLA 42 U.S.C. § 9601(40), for the Property which is the subject of this Agreement, by complying with all of the requirements for a Bona Fide Prospective Purchaser as set forth in Section 101(40), including, without limitation, the exercise of “appropriate care” by taking “reasonable steps” as set forth in Section 101(40)(D), 42 U.S.C. § 9601(40)(D), and the implementation of and compliance with any land use restrictions and institutional controls as set forth in Section 101(40)(F), 42 U.S.C. § 9601(40)(F) for so long as Settling Purchaser retains any ownership interest in the Site.

#### **VII. NOTICES AND SUBMISSIONS**

18. Settling Purchaser shall incorporate comments received from U.S. EPA into its construction plans submitted under paragraph 10. Settling Purchaser shall provide a copy

of the revised submittal documenting the incorporation of those comments along with a written explanation of any comments that were not included in full within 30 days of receipt of U.S. EPA's comments. Settling Purchaser shall also provide at least 30 days prior notice and an opportunity to comment on any significant proposed modifications to those plans.

19. With respect to all documents submitted to U.S. EPA for approval under this Agreement, U.S. EPA may approve, disapprove, require revisions to, or modify the draft submittals in whole or in part. If U.S. EPA requires revisions, Settling Purchaser shall submit a revised draft submittal within 14 business days of receipt of U.S. EPA's notification of the required revisions. Settling Purchaser shall implement the submittal as approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the submittal, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Agreement.

20. Settling Purchaser shall submit a quarterly written progress report to U.S. EPA concerning actions undertaken pursuant to this Agreement every 90th day beginning from the completion of the U.S. EPA's on-site construction and excavation activities under the selected response action, until the planned redevelopment at the Site is complete. The 90 day progress report requirement is subject to extension upon written consent by U.S. EPA

as provided in Section XIV (Modifications). These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems. Once the planned redevelopment is completed, Settling Purchaser shall submit an annual progress report on its implementation of the operation and maintenance plan along with an annual certification that all protective covers, engineered barriers and vapor intrusion controls are effective, operational and in good repair.

21. Settling Purchaser shall submit 1 copy of all plans, reports or other submissions required by this Agreement to the individuals identified below. Settling Purchaser shall also submit another copy of such documents in electronic form. Any notices, documents, information, reports, plans, comments, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Agreement, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, facsimile or electronic mail-read receipt requested.

Submissions to Settling Purchaser shall be addressed to:

Bruce Burris  
City Engineer  
1850 Lewis Avenue  
North Chicago, IL 60064

With copies to:

Thomas Yu  
Jeep & Blazer, LLC  
24 N. Hillside Ave, Ste A  
Hillside, IL 60162  
Phone: (708) 236-0830  
Fax: (708) 236-0828  
[tsyu@enviroatty.com](mailto:tsyu@enviroatty.com)

Submissions to U.S. EPA shall be addressed to:

Syed Quadri  
Remedial Project Manager (SR-6J)  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, IL 60604-3950  
Phone: (312) 886-7188  
Fax: (312) 886-4071  
[Quadri.Syed@epamail.epa.gov](mailto:Quadri.Syed@epamail.epa.gov)

With copies to:

Thomas Krueger  
Associate Regional Counsel (C-14J)  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, IL 60604-3950



Phone: (312) 886-0562  
Fax: (312) 886-7160  
[Krueger.Thomas@epamail.epa.gov](mailto:Krueger.Thomas@epamail.epa.gov)

Submissions to Illinois EPA shall be addressed to:

Eric Runkel  
Illinois EPA  
Bureau of Land (MC-24)  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
Phone: (217) 782-0451  
[Eric.Runkel@illinois.gov](mailto:Eric.Runkel@illinois.gov)

#### **VIII. RELEASE AND WAIVER OF SECTION 107(r) LIEN**

22. Subject to the Reservation of Rights in Section IX of this Agreement, in consideration of the commitments set out in Section IV (Actions to Be Performed by Settling Purchaser), V (Access/Notice/Institutional Controls), VII (Notice and Submissions) and XII (Payment of Costs), U.S. EPA agrees to release and waive any lien it may have on the Site now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by U.S. EPA in responding to the release or threat of release of hazardous substances that were disposed of at the Site before Settling Purchaser acquired ownership of the Site.

## **IX. RESERVATION OF RIGHTS**

23. This Agreement does not release and waive or compromise any right of U.S. EPA or the United States other than the release and waiver by U.S. EPA of its right to assert or perfect a windfall lien pursuant to Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by U.S. EPA in responding to the release or threat of release of hazardous substances that were disposed of at the Site before Settling Purchaser acquired ownership of the Site, subject to actions to be performed by Settling Purchaser as provided in Section IV. U.S. EPA and the United States reserve, and this Agreement is without prejudice to, all rights against Settling Purchaser with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Purchaser, assignees, successors in interest or any lessees, sublessees or other parties with rights to use the Site to meet a requirement of this Agreement, including but not limited to Section IV, Actions To Be Performed By Settling Purchaser, and Section V, Access/Notice/Institutional Controls;

(b) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than U.S. EPA;

(c) liability under CERCLA, including Sections 106 and 107, 42 U.S.C. §§ 9606 and 9607, which arises due to failure of Settling Purchaser or assignees, successors in

interest or any lessees, sublessees, or other parties with rights to use the Site to comply with Section 101(40), 42 U.S.C. § 9601(40); and

(d) liability under CERCLA resulting from the release or threat of release of hazardous substances that were disposed of at the Site after the Settling Purchaser acquired ownership of the Site.

24. Nothing in this Agreement is intended as a release and waiver for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, other than the release and waiver of the Section 107(r) lien in Section V, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement. The United States reserves the right to compel potentially responsible parties to perform or pay for response actions at the Site.

25. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by U.S. EPA in exercising its authority under federal law. Settling Purchaser acknowledges that it has purchased property where response actions may be required.

## **X. PARTIES BOUND**

26. This Agreement shall apply to and be binding upon U.S. EPA, and shall apply to and be binding upon the Settling Purchaser and Settling Purchaser's successors and assigns. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party. Any change in ownership or corporate status involving the property addressed shall in no way alter the release and waiver of the lien under this Agreement.

## **XI. WAIVER OF CLAIM FOR REIMBURSEMENT**

27. Settling Purchaser waives and shall not assert any claim for reimbursement from the United States with respect to any payment required by Sections IV (Actions To Be Performed By Settling Purchaser), XII (Payment of Costs) or XIII (Emergency Response) of this Agreement, including but not limited to any direct or indirect claim for reimbursement of such payment from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, or any other provision of law, or from any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113. Nothing in this Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.

§ 300.700(d). Settling Purchaser further waives and shall not assert any claim of a taking by the United States related to any response actions performed by U.S. EPA at the Site.

## **XII. PAYMENT OF COSTS**

28. If the Settling Purchaser fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV, Actions to Be Performed by Settling Purchaser, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

## **XIII. EMERGENCY RESPONSE**

29. In the event of any action or occurrence relating to the Settling Purchaser's activities under this Agreement which causes or threatens a release of hazardous substances from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Settling Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the U.S. EPA's Project Coordinator, or, if the Project Coordinator is unavailable, U.S. EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Purchaser shall notify the U.S. EPA Emergency Response Unit, Region 5. The Settling Purchaser shall take such actions in consultation with U.S. EPA's Project Coordinator or other available authorized U.S. EPA

officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the operation and maintenance plan. In the event that the Settling Purchaser fails to take appropriate response action as required by this Section, and U.S. EPA takes such action instead, the Settling Purchaser shall reimburse U.S. EPA and the State all costs of the response action not inconsistent with the NCP.

30. Nothing in the preceding Paragraph or in this Agreement shall be deemed to limit any authority of the United States, a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances on, at, or from the Site, or b) to direct or order such action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

#### **XIV. MODIFICATIONS**

31. U.S. EPA's Project Coordinator may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by U.S. EPA promptly, but shall have as its effective date the date of the U.S. EPA's Project Coordinator oral direction. Any other requirements of this Agreement may be modified in writing by mutual agreement of the parties.

32. If Settling Purchaser seeks permission to deviate from any approved work plan or schedule, Settling Purchaser shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. Settling Purchaser may not proceed with the requested deviation until receiving oral or written approval from the U.S. EPA's Project Coordinator pursuant to Paragraph 31.

33. No informal advice, guidance, suggestion, or comment by the U.S. EPA's Project Coordinator or other U.S. EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Settling Purchaser shall relieve Settling Purchaser of its obligation to obtain any formal approval required by this Agreement, or to comply with all requirements of this Agreement, unless it is formally modified.

#### XV. DISCLAIMER

34. This Agreement in no way constitutes a finding by U.S. EPA as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by U.S. EPA that the Site is fit for any particular purpose.

#### **XVI. EFFECTIVE DATE**


35. The effective date of this Agreement shall be the date upon which U.S. EPA issues written notice to the Settling Purchaser that U.S. EPA has fully executed the Agreement.

**XVII. ATTORNEY GENERAL APPROVAL**

36. The Attorney General of the United States or his designee has issued prior written approval of the settlement embodied in this Agreement.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:   
\_\_\_\_\_  
Mary A. Gade  
Regional Administrator  
U.S. EPA Region 5

11-26-07  
Date



IT IS SO AGREED: CITY OF NORTH CHICAGO

BY: Leon Rockingham, Jr.

Name MAYOR LEON ROCKINGHAM, JR

Date September 13, 2007

**EXHIBIT 1**  
**SITE MAP**